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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,170	01/19/2001	Troy J. Chapman	353532000610	1930

7590 06/19/2003
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EXAMINER

DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/19/2003 *10*

Please find below and/or attached an Office communication concerning this application or proceeding.

8c

Office Action Summary	Application No. 09/766,170	Applicant(s) CHAPMAN, TROY J.	
	Examiner D Jacob Davis	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 and 32-37 is/are allowed.
- 6) ☒ Claim(s) 1,2,12,13,14,16,17,20-22,31 is/are rejected.
- 7) ☒ Claim(s) 3-11,15,18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 2, 12, 13, 17, 20, 31 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Dereume et al. (US 5,723,004). Dereume discloses an "anastomosis device" (Fig. 21) that is capable of end to side anastomosis comprising a graft vessel 24 and a coupling member 23. Graft vessels may be artificial or real. The coupling member is compressed and then self-expanded when implanted within a vessel. The device further comprises a tubular member 22. The diameter of the tubular member is inherently between about 0.5 to 6.0 mm since that is approximate the size of a vessel. Inherently, an introducer is used to deploy the graft through a vessel.

Claim 16 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(c) as obvious over Dereume. Dereume discloses the coupling member that inherently has an outer diameter in an expanded state that is between about 10 to 80 percent larger than an inside of the target vessel since the graft must be larger than the vessel walls to maintain its position. In the alternative it would

have been obvious to one of ordinary skill in the art at the time the invention was made to make the coupling member at least about 10 percent larger than a vessel wall to prevent graft movement.

Claims 1, 2, 12, 13, 14, 17, 20-22, 31 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Leonhardt (US 6,280,467). Leonhardt discloses an "anastomosis device" (Figs. 4A-4B) capable of end to side anastomosis. His device is "formed by a hollow foamed tube 100 (Fig. 4A) of a closed cell thermoplastic material" with a stent 102 on the inside of the foamed tube 100. The "graft vessel" is the inner thermoplastic cell while the "coupling member" is the foamed tube 100. The introducer contracts the coupling member before deployment where it is then self-expanded. Inherently the tubular member is between about 0.5 mm to 6.0 mm since the device is placed in vessels, which have diameters of that range. Fig. 3 illustrates an introducer 60 used with the invention. The distal tip of element 86 of the introducer forms a groove through which a suture may be passed to attach to the device. The introducer is separated from the device and is pulled back.

Regarding claim 38, the device is in a compressed state when in the introducer, and expands to an expanded state within a target vessel.

Claim 16 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(c) as obvious over Leonhardt. Leonhardt discloses the coupling member that inherently has an outer diameter in an expanded state that is between about 10 to 80 percent larger than an inside of the target vessel since the graft

must be larger than the vessel walls to maintain its position. In the alternative it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the coupling member at least about 10 percent larger than a vessel wall to prevent vessel movement.

Allowable Subject Matter

Claims 23 and 32-37 are allowed.

Claims 3-11, 15, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

DJD
June 16, 2003


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700